



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2022-0303

RIN 1625-AA09

Drawbridge Operation Regulation; Trail Creek, Michigan City, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Amtrak Railroad Bridge, mile 0.9, over Trail Creek, in Michigan City, Indiana, to allow it to operate remotely. The bridge has operated remotely since 2003 without inclusion in the CFR and without incident or public complaint. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0303 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
Left	As viewed from the mouth of the river
LWD	Low Water Datum Based on IGLD85
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
Right	As viewed from the mouth of the river
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Amtrak Railroad Bridge, mile 0.9, over Trail Creek, in Michigan City, Indiana, was authorized to operate remotely by letter during the United States Coast Guard's transition from the Department of Transportation to the Department of Homeland Security. Inclusion of the Amtrak Railroad Bridge, mile 0.9, into the regulations was overlooked and this proposed rule will correct that oversight and provide the public the opportunity to comment on the bridge operations.

Trail Creek is 7.3 miles long and used by small powered and unpowered recreational vessels, commercial passenger vessels, and fishing vessels. Freighters have not utilized the waterway for several years. The Amtrak Railroad Bridge, mile 0.9 is a swing railroad bridge and provides a horizontal clearance of 41 feet in the right draw and 44 feet in the left draw and a vertical clearance of 7 feet above LWD in the closed position and an unlimited vertical clearance in the open position. Each day during the summer, approximately 35 recreational and commercial fishing vessels transit the Amtrak Railroad Bridge, mile 0.9; most of the 35 vessels make daily roundtrips, transiting the bridge two times each day.

In 33 CFR 117.401, the Amtrak Railroad Bridge, mile 0.9, is required to open on signal except that, from December 1 through March 15 the Amtrak Railroad Bridge, mile

0.9, is required to open on signal if a 12-hour advance notice is provided.

III. Discussion of Proposed Rule

This proposed rule will allow the public to comment on how well the bridge has been operated remotely for the last 19 years. The drawtender will continue to remain in Chicago, Illinois and will be responsible for the remote operation of two remote railroad bridges: the Amtrak Railroad Bridge, mile 0.9, over Trail Creek and the Amtrak Railroad Bridge, mile 3.77, over the South Branch of the Chicago River.

The Amtrak Railroad Bridge, mile 0.9, will continue to operate a 2-way public address system to answer calls from: 1) vessel horn signals; 2) a VHF-FM Marine Radio that will monitor channel 16; and 3) cameras that will monitor the tracks, the underside of the bridge, and the upriver and down river view of the river.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that remote operation will not significantly impact a vessel’s ability to transit the bridge; further, the bridge has operated in said manner since 2003 without comment or complaint.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended,

requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National

Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0303 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all

comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117
Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.401 Trail Creek revise paragraph (b) to read as follows:

§ 117.401 Trail Creek.

* * * * *

(b) The draw of the Amtrak Railroad Bridge, mile 0.9, at Michigan City shall open on signal; except from December 1 through March 15, the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The bridge shall operate and maintain a VHF-FM Marine Radio.

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M. J. JOHNSTON
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District

